

HUGH C.M.BRADY, ESQ.
ADMITTED IN MASSACHUSETTS,
NEW YORK, SOUTHERN DISTRICT OF
NEW YORK & EASTERN DISTRICT OF
NEW YORK



SMITH & BRINK, P.C.
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION
WWW.SMITHBRINK.COM

BRAINTREE
350 GRANITE STREET
SUITE 2204
BRAINTREE, MA 02184
TEL: (617) 770-2214
FAX: (617) 774-1714

July 22, 2021

VIA ECF

Magistrate Judge Cheryl L. Pollak
United States Courthouse
Eastern District of New York
225 Cadman Plaza East,
Brooklyn, NY 11201

Re: Allstate Insurance Company et al. v. Dr. Eliezer L. Offenbacher M.D. PLLC et al.
U.S.D.C. for the Eastern District of New York
Civil Action No.: 1:21-cv-01013-FB-CLP

Dear Magistrate Judge Pollak

My office represents Allstate and its affiliates (“Allstate”) in the above-captioned action and submits the subject letter seeking clarification regarding the Court’s July 22, 2021 Order as to a stay on third-party subpoenas. Specifically, Allstate seeks clarification as to whether the Court’s Order commands a stay of 1) all third-party subpoenas pertaining to Offenbacher Defendants; 2) all third-party subpoenas pertaining to Dr. Eliezer L. Offenbacher M.D. PLLC, Dr. Offenbacher Medical Imaging, PLLC and Eliezer L. Offenbacher, M.D. (the “Offenbacher Defendants”); or 3) the third-party subpoenas pertaining to the Offenbacher Defendants referenced in their July 21, 2021 motion to quash (i.e. JP Morgan Chase records) (ECF No. 66). Allstate is preparing correspondence to comply with the Court’s Order, and seeks to confirm which third parties must be notified.

It should be noted for the record that Allstate has serious concerns with the veracity of the filings by the Offenbacher Defendants, and the need for this motion generally. At all times, the Offenbacher Defendants had notice of the subject subpoenas; however, they elected to wait until nearly a month after the subpoenas were served. Indeed, this motion came four (4) days after Allstate served the Offenbacher Defendants with the records it received from various third parties including one of the JP Morgan Chase Accounts referenced in Offenbacher Defendants’ motion. Moreover, the Offenbacher Defendants seek to quash any “other” subpoenas issued by Allstate that the Affiant David Dender was not notified. However, Mr. Dender has received electronic and paper copies of all discovery requests and subpoenas. The Offenbacher Defendants’ motion also fails to comply with Local Rule 37.3 because the Offenbacher Defendants proffer information that is inaccurate regarding the parties efforts to meet and confer. Specifically, the Offenbacher Defendants’ motion implies that we could not come to any agreements. However, the parties had

agreements regarding narrowing of certain subpoenas. Notably, the dispute regarding the JP Morgan Chase records was limited to the relevant time period and not the entire subpoena yet the Offenbacher Defendants continue to obfuscate the discovery process. As one example, Allstate was informed yesterday that a third-party was directed not to respond to an Allstate subpoena but Allstate's counsel received no such notice from the Offenbacher Defendants. Allstate has acted in good faith with respect to all discovery issues. In fact, Allstate affirmatively notified the Offenbacher Defendants of the inclusion of their clients' confidential banking information in the public record. Allstate will further address these issues in its opposition but respectfully requests that this Honorable Court direct Defendants to properly refile a redacted motion to quash with exhibits as it is no longer accessible on the docket, and provide clarification regarding which third-party subpoenas are stayed.

Thank you for your attention to the foregoing. If you have any questions or concerns, please do not hesitate to contact the undersigned.

Very Truly Yours,

/s/ Hugh C.M. Brady, Esq.

Hugh C.M. Brady, Esq.

Enclosures

cc: All Counsel and Parties of Record via ECF
Steve Losik, M.D.
Horizon Radiology, P.C.